



United States Senate
OFFICE OF THE MAJORITY LEADER
WASHINGTON, D. C. 20510

March 17, 2005

The Honorable Harry Reid
S-221, The Capitol
Washington, DC 20510

Dear Harry:

Your letter of March 15, 2005, sets out your objections to exercise of the Constitutional option as a way to reform aspects of the judicial confirmation process. Please know that I would undertake such a course only if it were clear to me that reasonable alternatives were not possible.

I agree that the Senate must not be a rubber stamp, but I firmly disagree that the filibuster is the appropriate way to vindicate the Senate's check on the appointments process. For more than two centuries, filibusters were rarely attempted on judicial nominees, and no nominee with clear majority support was ever barred from the bench by filibuster. Also, nominees filibustered in the last Congress were not "rejected." Rather, those filibusters denied the full Senate the right to vote. President Bush was right to resubmit these qualified individuals to the Senate. They deserve up-or-down votes. As you know, within the meaning of the Constitution, a cloture vote is not advice and consent; instead, it is delay and deny.

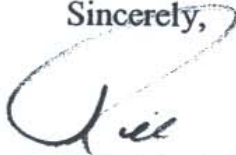
Each party can recite a litany of complaints about the way judicial nominees have been treated, in a process that continues to descend into bitter partisanship. However, this cycle of recrimination cannot continue. It is not healthy for the Senate. Moreover, it produces manifest unfairness to Presidents of both parties and to their nominees, and cheapens our responsibilities as United States Senators.

Instead, reform of the confirmation process is sorely needed and should precede Senate consideration in this Congress of any of President Bush's judicial nominees.

There is precedent for this. You are aware that when then-Majority Leader Robert C. Byrd proposed cloture changes in 1979, he announced he would exercise the Constitutional option, but would withhold if Republicans gave him a time agreement allowing for robust debate, an opportunity for amendment, and the certainty of a vote. Republicans negotiated an agreement with Senator Byrd, engaged in vigorous debate, offered a series of amendments to his proposal, and gave him a vote. With major cloture reform achieved, the Constitutional option was not exercised. This example affords us a model for resolving present difficulties.

When we return after the Easter recess, I will offer a proposal that takes account of complaints both parties have had with the confirmation process. It will protect the Constitution, validate our duties as Senators, and restore fairness to a process gone awry. I will seek your assistance in securing an agreement that allows us to expeditiously consider that proposal. Your cooperation in resolving this issue will ensure that bipartisanship continues to flourish in an institution that has served our nation so well over the past two centuries.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill", with a large, sweeping flourish above it.

Bill Frist, M.D.